

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Dennis Hanlon and Juanita Hanlon,

Complainants,

vs.

Cox California Telcom, L.L.C. dba Cox
Communications (U-5846-C),

Defendants.

Case 00-02-019
(Filed February 15, 2000)

**ADMINISTRATIVE LAW JUDGE'S RULING
PROPOSING DISMISSAL OF THIS CASE DUE TO MOOTNESS**

The purpose of this ruling is to invite the parties to comment on whether there is any reason this case should not be dismissed. As indicated below, the principal grievance set forth in the complaint has been addressed by defendant Cox California Telcom, L.L.C. (Cox), and the complainants' other main concerns have been addressed in other Commission proceedings. Thus, developments since the filing of the complaint appear to have rendered this case moot.

Background

The complaint herein was filed in February 2000. It arose out of the installation by defendant Cox of certain telephone equipment necessary to enable Robert and Sharon Nava, the neighbors of complainants, to take telephone service from Cox. The equipment installation took place on April 10 and 12, 1999. At the time of the installation, complainants and the Navas (who are not

parties to this case) were neighbors who each occupied one unit in a two-unit condominium in San Clemente, California.

The complaint alleged that on the dates in question, Cox personnel had entered complainants' premises without notice for the purpose of installing a network interface unit (NIU), a device that allowed the Navas to take local exchange telephone service from Cox. The complaint alleged in very general terms that such entry without notice was improper and unlawful.

The complaint also alleged that when the Hanlons complained about Cox's installation of the NIU on the door of a utility closet they shared with the Navas, and the Navas agreed that the NIU should be moved to their property, Cox declined to do so unless the Navas paid "special construction charges." Because Cox conditioned its willingness to move the NIU upon the payment of these charges, the complaint alleged that Cox had engaged in false and misleading advertising when it offered existing cable subscribers like the Navas "free" activation of local telephone service. The complaint also alleged that advertisements relating to high-speed Internet access service offered by a Cox affiliate were false and misleading.

On April 3, 2000, Cox filed an answer denying the material allegations of the complaint. Cox also filed a motion to dismiss the complaint, which sought dismissal on several grounds. First, Cox argued that the complaint failed to identify any law or Commission rule or order that Cox had violated, as required by § 1702 of the Public Utilities Code. Second, Cox argued that under its interconnection agreement with Pacific Bell (and agreements with other Cox affiliates), Cox had a right to use existing utility easements for the purpose of providing local exchange service, and that this was all it had done in the case of the Navas. Since the Hanlons' complaints about the entry of Cox personnel onto their property arose out of a permissible use of easements, the conduct

complained of was not actionable, according to Cox. Third, to the extent the complaint could be read as challenging the validity of any of Cox's tariffs, Cox argued that the complaint failed to state a claim because the signature requirements of Pub. Util. Code § 1702 had not been complied with.¹ Finally, Cox argued that since the complainants were not Cox customers, they lacked standing to challenge the allegedly unfair effects of Cox's tariffs upon persons who were Cox customers.

A prehearing conference (PHC) was held by telephone on July 12, 2000. After some discussion of complainants' allegations, counsel for Cox agreed to the suggestion of the undersigned that Cox send personnel to the complainants' home at a convenient time to determine whether the NIU could be moved to a different location that would satisfy the complainants. It was also agreed that after this visit was made, a second telephonic PHC would be held to determine whether any other issues needed to be decided.

The second telephonic PHC was held on September 26, 2000. During this PHC, complainants acknowledged that Cox personnel had visited their home as agreed and had relocated the NIU to their satisfaction. However, the Hanlons declined to agree to an immediate dismissal of their complaint, saying that they had made other allegations about the conduct of Cox personnel, and that they wanted to consider these further before agreeing to any dismissal.

¹ Section 1702 requires that in order to challenge a utility tariff in a complaint, the complaint must be signed by the "mayor or president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas, electricity, water, or telephone service."

On October 3, 2000, complainants sent a letter by facsimile to the undersigned. The letter stated that while the Hanlons would not be pursuing their claims of false and misleading advertising, they did wish to pursue their claims that (1) the Commission should investigate Cox's placement of telecommunications equipment in residences in Orange and San Diego Counties, (2) Cox be required to give advance notice to non-customers who would be directly affected by a Cox installation, (3) Cox's employees and contractors be required always to identify themselves when on the job, and (4) Cox be required to respond to all complaints, whether from customers or non-customers, within 30 days.

On October 26, 2000, complainants submitted what they characterized as an answer to Cox's motion to dismiss. In this pleading, the Hanlons reiterated their complaints about the failure of Cox personnel to introduce themselves when doing installation work at complainant's condominium, and set forth the details of another such incident that allegedly occurred on February 24, 2000. In addition, complainants stated that they wished to examine Cox's training manuals for employees.

Since the filing of October 26, 2000, the undersigned has had two communications from complainants. On November 16, 2000, they faxed a letter noting that Cox had not responded to the claims in the October 26 pleading. On March 5, 2001, complainants informed the Commission of a change of address.

Discussion

As noted above, the principal grievance that gave rise to the complaint was that Cox personnel had installed the NIU intended to serve the Navas in complainants' utility closet. Although Cox insisted that the applicable easements entitled it to make this installation, Cox personnel moved the NIU to a location apparently satisfactory to complainants after the first PHC in July 2000. Thus, the

principal issue raised by the complaint is now moot.

Another of the complainants' grievances was that Cox personnel failed to identify themselves when they came to complainants' home to do the installation work. The issue of how employees of telecommunications companies must identify themselves has recently been addressed in Rulemaking (R.) 00-02-004, the Commission's proceeding to establish consumer rights and consumer protection rules applicable to all telecommunications utilities. In that proceeding, Commissioner Wood has proposed (in a June 6, 2002 draft decision) that the Commission adopt a new general order, Part II of which would include a rule concerning employee identification. The proposed new employee identification rule, Rule 14, provides as follows:

"(a) Every carrier shall prepare and issue to every employee who, in the course of his or her employment, has occasion to enter the premises of subscribers of the carrier or applicants for service, an identification card in a distinctive format having a photograph of the employee. The carrier shall require every employee to present the card upon requesting entry into any building or structure on the premises of an applicant or subscriber.

"(b) Every carrier shall require its employees to identify themselves at the request of any applicant or subscriber during a telephone or in-person conversation, using a real name or other identifier unique for the carrier and the applicant or subscriber to refer matters back to the same employee in the future when necessary."

Commissioner Wood's commentary on this proposed rule notes that it is based on Pub. Util. Code § 708, and that it was perhaps the least controversial rule of any proposed in the proceeding because it affects public safety. The commentary also notes that the term "employee" is defined to include "employees, contract employees, contractor employees, agents, and carrier representatives of any and all types." (June 6 draft decision, pp. 79-80.)

Given the lack of controversy surrounding the proposed employee

identification rule, it is likely that the Commission will adopt it in the near future. The fact that it applies to the contractors of a telecommunications company as well as its employees should go a long way toward addressing the general concern about Cox employees failing to identify themselves that the Hanlons raised in their complaint.

In view of the developments described above, it appears that complainants' principal concerns have been addressed, and that this case should therefore be dismissed. However, if either party objects to dismissal, that party may file comments no later than October 18, 2002 explaining what issues raised by the complaint still need to be decided. Such comments may not be used as a vehicle for raising new issues. If either party files comments urging that one or more particular issues need to be heard, the undersigned will determine -- after evaluating the effect of Cox's motion to dismiss on the issue claimed to require a decision -- whether a hearing is necessary.

In accordance with the discussion above, **IT IS RULED** that:

1. If either party believes that one or more issues remain in this proceeding which require a decision, that party may file comments no later than October 18, 2002, setting forth such issues.
2. The comments due on October 18, 2002 may not be used as a vehicle for raising new issues.

Dated September 27, 2002, at San Francisco, California.

/s/ A. KIRK MCKENZIE

A. Kirk McKenzie
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Proposing Dismissal of this Case Due to Mootness on all parties of record in this proceeding or their attorneys of record.

Dated September 27, 2002, at San Francisco, California.

/s/ TEREISTA C. GALLARDO

Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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